

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff, : CASE NO. 5:07 CR 563-001

-vs-

ORDER

ERVIN THOMAS,

Defendant. :

UNITED STATES DISTRICT JUDGE LESLEY WELLS

This Court rendered judgment against Ervin Thomas on 21 July 2009 and, pursuant to a plea agreement, found him guilty of conspiracy to distribute and possession with intent to distribute cocaine in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C) & 846, and ordered him to serve a period of 121 months incarceration on each Count 1, 5 and 15 of the Indictment to run concurrently. (Docs. 342, 345). Ervin Thomas also received 10 years of supervised release on Count 1, and 5 years on Counts 5 and 15, to run concurrently.

On 10 August 2009 Ervin Thomas filed a notice of appeal with the Sixth Circuit Court of Appeals. (Doc. 347). On 29 July 2009 the Defendant, through his trial attorney, Richard Drucker, filed the herein motion to appoint counsel for his appeal and to waive filing fees and costs due to his indigency. (Doc. 346).

With regard to Ervin Thomas' request for appointment of appellate counsel from this Court and the request by Mr. Drucker for an extension of the deadline to file the appeal, the Court notes that pursuant to the Sixth Circuit's recent Rule 101, Mr. Thomas must direct his request to the Sixth Circuit. Rule 101(a) explains that, "[t]rial counsel in criminal cases, whether retained or appointed by the district court, is responsible for the continued representation of the client on appeal until specifically relieved by this [the Sixth Circuit] Court." Accordingly, the District Court will deny the Defendant's request as this Court lacks jurisdiction to either appoint counsel for Mr. Thomas or to grant Mr. Drucker's request for an extension of time to file.

Further, Ervin Thomas requests to proceed on appeal without prepayment of fees. The Defendant has not filed the requisite forms nor submitted substantiating affidavit evidence for his request. Accordingly, the Court cannot grant Mr. Thomas' request to proceed without prepayment of fees until the proper forms are placed before the Court.

IT IS SO ORDERED.

/s/Lesley Wells
UNITED STATES DISTRICT JUDGE

Date: 17 September 2009